

The New Electronic Disclosure Rule Is Here!

July 9, 2020 3–3:50 p.m. ET



PSCA

Plan Sponsor Council
of America

Speakers

- Moderator: Will Hansen, Executive Director, Plan Sponsor Council of America
- John Doyle, Senior Vice President, Capital Group
- Katie Hockenmaier, CIPM, Partner, Mercer
- Andrew Liazos, Partner, McDermott Will & Emery LLP

New Safe Harbors, Effective Date and Scope of Rules

- New “notice and access” and direct email safe harbors to expand electronic notification
- Employers may continue to rely on 2002 safe harbor in DOL regulations
- Supersedes earlier DOL sub-regulatory guidance subject to 18 month transition rule:
 - pension statements, QDIA notices and participant fee / investment disclosures
- Effective July 26, 2020 subject to DOL non-enforcement position for early adoption
- Applies only to retirement plans when complying with mandatory ERISA disclosures

Notice and Access Safe Harbor

- Requires providing notice of internet availability (NOIA) and online access to documents
- NOIA must be sent to participant provided electronic address (email/smartphone #) or employment email address
- NOIA generally must be sent every time a document is posted to the website
- Consolidated NOIA permitted once every 14 months for documents that must be disclosed annually
 - e.g., SPDs, SARs, annual funding notice, QDIAs – but not quarterly benefit statements
- Specific content requirements for NOIA, including opt-out option for paper documents
- One time paper notice to announce shift to new safe harbor

E-Disclosure Rule Q & A

1. In general, what are the key benefits to electronic disclosure?
2. What caused the delay in providing a safe harbor (in other words, what did some groups think were wrong with it)?
3. What are the administrative roadblocks to implementation for recordkeepers and plan sponsors?
4. What are the key differences between this safe harbor and the 2002 regs? Do we expect an immediate shift to the newest safe harbor or will many still rely on the 2002 rules?

E-Disclosure Rule Q & A (cont.)

5. Do we expect clarification on the document retention rules, specifically around conversions where there is a change in recordkeeper/administrator?
 - a. Should we expect the retention requirements to impact recordkeeping fees?
6. Many plan sponsors expect recordkeepers to provide the vehicle for administering the e-disclosures. How can plan sponsors help facilitate this quickly and efficiently?
7. What steps should be taken to protect participant privacy? Do state law privacy restrictions apply in addition to DOL safe harbor requirements – is there ERISA preemption? What disclosures should be given to an employee who provides a personal email address (e.g., Yahoo, Gmail)?

E-Disclosure Rule Q & A (cont.)

8. Can employers use different safe harbors based on the type of required disclosure or for different employees within a controlled group?
9. Do we expect plan sponsors to prefer the notice and access safe harbor or the direct email safe harbor?
10. What records are required in order to establish delivery of documents under new safe harbors? How long do we keep information posted on an internet site?
11. What happens if the website goes down – at what point is there no longer compliance with the safe harbor? Should there be special provisions in TPA agreements to address this possibility?

Future PSCA Webcasts

Checklist for Year-End 2020: Coming Out of Pandemic and Preparing for 2021
July 21, 2020 2 – 2:50 p.m. ET

Sponsored by Winston & Strawn LLP

Fiduciary Rule
August 13, 2020 2 – 2:50 p.m. ET

2020 HSA Survey Results
August 25, 2020 2 – 2:50 p.m. ET

Ready to Launch – NQDC Plan Communication Strategies
September 10, 2020 2 – 2:50 p.m. ET

A Roadmap for Helping Women Prepare for Retirement
October 20, 2020 2 – 2:50 p.m. ET
Sponsored by Dimensional Fund Advisors

For more information and to register visit www.pasca.org/education/webcasts